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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

TRAVIS JAMES THURMAN,

Defendant and Appellant.

C080761

(Super. Ct. No. 14F04174)

Appointed counsel for defendant Travis James Thurman asked this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment.

I

Cleland Vose was walking to his motorcycle on the evening of June 12, 2014, after looking for something that he had dropped. He heard someone yelling “Hey, you” from across the street. He saw Jamari Baugh, who is African American, and defendant, who is Caucasian, approximately 40 yards away. Baugh said, “Yeah, you. What are you

doing?” Defendant was standing silently next to Baugh. Vose initially ignored Baugh, but eventually looked at him and said, “What’s up?” Baugh reached into a backpack, pulled out a semiautomatic handgun and loaded a magazine into the gun. At that point, defendant danced around in the street excitedly saying, “Yeah, yeah, yeah.” Vose said, “Whoa, dude. There is no need for that, put that away. There ain’t no trouble here, not with me. You boys have a good evening.” He then turned around and continued walking.

By the time Vose reached his motorcycle, defendant and Baugh were within approximately 10 feet of him. Vose climbed onto the motorcycle and tried to avoid eye contact with Baugh and defendant. He heard Baugh say, “That’s a nice bike.” Vose responded, “Well, thank you. You boys have a good evening,” and then turned and finished putting on his gloves. Baugh, still holding the gun, said, “Now get off. I said get off.” Seconds later, Vose heard the sound of someone running up behind him and then realized he had been shot in the back. When he turned around, he saw Baugh holding the gun, but he did not see who shot him. Vose said, “You fucking shot me.” Defendant and Baugh fled. Vose got off his motorcycle and fell to the ground.

Other witnesses also testified to their observations of defendant that evening.

Officer Darryl Olesen, the on-call detective at the time, viewed the crime scene. Vose had a half pound of marijuana in his motorcycle saddlebag. Vose told Olesen nothing was taken from him and “it was possible that the people were after the marijuana . . . not the motorcycle.”

Officer William Sanderson, a detective at the time of the shooting, spoke with Vose at the hospital several days after the shooting. Vose said he had been at a local bar and grill the night of the shooting, having a drink with a friend and discussing whether or not he should sell some marijuana. Vose told Sanderson he saw Baugh pull a gun out of a backpack, but he could not see who shot him because his back was turned.

Defendant's father, Timothy Thurman, testified pursuant to a grant of immunity.¹ In June 2014, defendant had been living with Timothy "maybe a couple of weeks." The night of the shooting, Timothy awoke to the sound of a police helicopter over his apartment. He found defendant and Baugh in his kitchen. Baugh looked anxious. The next morning, defendant told him, "Dad, I fucked up," and said he shot a man. Defendant said he shot the man in self-defense when he saw the man reaching into his waistband. Later, Timothy drove defendant and Baugh to a field. He stayed in the truck while Baugh went into the field and defendant went into a culvert and out of view. Baugh told Timothy he was "looking for drugs." Timothy assumed defendant was "looking for the gun" because defendant indicated he knew where to go look for it. Approximately 15 minutes later, defendant returned empty-handed. Baugh returned 20 minutes later with some white pills.

Earlier that morning, Timothy had disposed of a gun case in the dumpster at his apartment complex. He could not recall if either defendant or Baugh had asked him to do so. He testified he did not look inside the case before he disposed of it, but the case did not feel like it had anything in it. He initially lied to police, denying he knew anything about what happened and telling them the case he threw away was a hair clipping kit.

Defendant testified and denied having anything to do with the shooting. At some point that evening, Baugh started fumbling with his backpack and pulled out a gun, which "startled" defendant. They continued on their way to Timothy's apartment, veering out into the street to avoid Vose who was walking up and down the street looking for something. They passed Vose's motorcycle when defendant heard a loud noise and "froze up." He heard Vose scream, "[Y]ou fucking shot me." Defendant turned and saw Baugh standing next to him and Vose lying next to his motorcycle. Defendant denied

¹ Because defendant and his father share the same last name, we will refer to Timothy Thurman by his first name for clarity.

shooting Vose and stated he had no idea who shot him. But defendant told his father, “Dad, I fucked up. I shot a guy.” He testified that he told his father he shot the man in self-defense because the man was “leaning over,” but that he lied because he knew Baugh needed help and his father was less likely to help if he thought Baugh was the shooter. Defendant said “It could have been true” when asked if he told his father, “I’m going to go get the gun.” When defendant was arrested several days later, he lied to police about what happened, telling them he was at his father’s apartment the entire night.

The jury found defendant guilty of attempted murder (Pen. Code, §§ 664, 187, subd. (a))² but not guilty of attempted carjacking (§§ 664, 215). The jury found true the allegation that defendant, a principal in the attempted murder offense, was armed with a firearm. (§ 12022, subd. (a)(1).)

The trial court sentenced defendant to eight years in state prison, consisting of the middle term of seven years plus a consecutive one-year term for the arming enhancement. The trial court awarded defendant 592 days of presentence custody credit (515 actual days plus 77 conduct days) and imposed a \$300 restitution fine (§ 1202.4), a \$300 parole revocation fine (§ 1202.45), a \$40 court operations assessment (§ 1465.8, subd. (a)(1)), and a \$30 court facility fee (Gov. Code, § 70373), waiving other specified fees and fines on a finding of defendant’s inability to pay, and reserving jurisdiction on the issue of victim restitution.

II

Appointed counsel filed an opening brief setting forth the facts of the case and asking this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of

² Undesignated statutory references are to the Penal Code.

the right to file a supplemental brief within 30 days of the date of filing the opening brief. More than 30 days elapsed and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

/S/
MAURO, J.

We concur:

/S/
HULL, Acting P. J.

/S/
HOCH, J.